

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAUN ROONEY, an individual,
on behalf of himself and all
other similarly situated,

Plaintiff,

v.

SAVE MART SUPERMARKETS; DOES
1-20, inclusive,

Defendant.

No. 2:20-cv-00671-JAM-FEB

ORDER GRANTING MOTION TO REMAND

On February 6, 2020, Shaun Rooney's ("Plaintiff") filed a proposed wage and hour class action complaint in Sacramento Superior Court against his former employer, Save Mart Supermarkets ("Defendant"). Not. of Removal, ECF No. 1, Exh. A. Defendant then filed a notice of removal, invoking the Court's federal jurisdiction under 28 U.S.C. §§ 1331, 1441 and 1446. Id. at 2.

Before the Court is Plaintiff's motion to remand. Plaintiff contends that this Court lacks jurisdiction because his claims arise only under state law. Mot., ECF No. 8. Defendant opposes

1 this motion. For the reasons described below, the Court GRANTS
2 Plaintiff's motion to remand.¹

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4 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

5 Plaintiff worked at Save Mart Supermarkets as an Order
6 Selector for about seven and a half years. Not. of Removal, Exh.
7 A, Compl. Plaintiff asserts six causes of action under state law
8 against Defendant for: (1) failure to provide wage statements,
9 (2) failure to pay overtime wages, (3) failure to keep requisite
10 payroll records, (4) waiting time penalties, (5) violating
11 California Unfair Competition Law, and (6) derivative California
12 Private Attorneys General Act ("PAGA") claims based on the first
13 four causes of action. Mot. at 7.

14 On March 30, 2020, Defendant removed Plaintiff's suit to
15 this Court. See Not. of Removal. Although all of Plaintiff's
16 claims arise under state law, Defendant removed on the grounds
17 that Plaintiff's overtime claim is preempted by Section 301 of
18 the Labor Management Relations Act ("LMRA").

19
20 II. OPINION

21 A. Legal Standard

22 Courts must strictly construe the removal statute against
23 removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566
24 (9th Cir. 1992). Generally, "any civil action brought in a
25 State court of which the district courts of the United States

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for June 2, 2020.

1 have original jurisdiction, may be removed by the defendant.”
2 28 U.S.C. § 1441.

3 Courts have original jurisdiction—or federal question
4 jurisdiction—of all civil actions arising under the
5 Constitution, laws, or treaties of the United States. 28 U.S.C.
6 § 1331. A plaintiff’s well-pleaded complaint must establish
7 “either that federal law creates the cause of action or that the
8 plaintiff’s right to relief necessarily depends on a resolution
9 of a substantial question of federal law.” Easton v. Crossland
10 Mortg. Corp., 114 F.3d 979, 982 (9th Cir. 1997) (internal
11 citations omitted). In other words, “it must be clear from the
12 face of the plaintiff’s well-pleaded complaint that there is a
13 federal question.” Id. (internal citations omitted). “[A]
14 civil complaint raising claims preempted by Section 301 [of the
15 LMRA] raises a federal question that can be removed to a federal
16 court.” Curtis v. Irwin Industries, Inc., 913 F.3d 1146, 1152
17 (9th Cir. 2019).

18 In determining whether removal is proper, “it is to be
19 presumed that a cause of action lies outside [the] limited
20 jurisdiction [of federal courts] and the burden of establishing
21 the contrary rests upon the party asserting jurisdiction.”
22 Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir.
23 2009) (internal citations omitted).

24 B. Analysis

25 Defendant argues the Court has federal jurisdiction over
26 Plaintiff’s suit because his claim for overtime pay is preempted
27 by section 301 of the LMRA since he worked pursuant to a
28 collective bargaining agreement (“CBA”). Not. of Removal ¶ 4.

1 Plaintiff, on the other hand, argues removal is not proper
2 because the CBA at issue does not meet the requirements for
3 preemption. Mot. at 6.

4 Section 301 provides federal jurisdiction over "suits for
5 violation of contracts between an employer and a labor
6 organization." Burnside v. Kiewit Pacific Corp., 491 F.3d
7 1053, 1058-59 (9th Cir. 2007). Congress enacted this statute to
8 mandate federal courts "to fashion a body of federal common law
9 to be used to address disputes arising out of labor contracts."
10 Id. The preemptive force of this section entirely displaces any
11 state cause of action for violation of a labor contract and
12 transforms it into a claim that shall be considered as arising
13 under federal law. Id. But not every dispute concerning a
14 labor contract or "tangentially involving a provision of a
15 [CBA]," is preempted by Section 301. Sarmiento v. Sealy, Inc.,
16 No. 18-cv-01990-JST, 2019 WL 3059932 (N.D. Cal. July 12, 2019).

17 Courts use a two-part test to determine whether Section 301
18 preemption is proper. Burnside, 491 F.3d at 1059-60. First,
19 courts must determine whether the cause of action is grounded in
20 state law or in a CBA. Id. at 1060. If the claim seeks to
21 "purely vindicate a right or duty created by the CBA itself,"
22 then the claim is preempted, and the inquiry ends there.
23 Curtis, 913 F.3d at 1152-53. Otherwise, the Court proceeds to
24 the second step and asks whether the state law claim is
25 "substantially dependent on [the] analysis of the CBA." Id. at
26 1153. If the claim requires "interpreting" the CBA, rather than
27 simply "looking to" it, the state law claim is preempted. Id.

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1 1. Step 1: Whether the Right Exists Solely as a Result
2 of the CBA

3 To determine if a right is independent of a CBA, the Court
4 must consider whether the “legal character of a claim” is
5 “independent of rights under the [CBA].” Burnside, 491 F.3d at
6 1060. Moreover, “reliance on the CBA as an aspect of a defense
7 is not enough to inject a federal question into an action that
8 asserts what is plainly a state-law claim.” Id. (internal
9 quotations omitted).

10 At issue is Plaintiff’s second cause of action for failure
11 to pay overtime wages under California Labor Code Section 510.
12 Not. of Removal ¶ 5. Plaintiff asserts that Defendant did not
13 pay him, and similarly situated employees, overtime wages owed
14 under Section 510 for “regularly work[ing] in excess of (8)
15 hours a day/and or forty (40) hours per week.” Not. of Removal,
16 Exh. A, ECF No. 1-1, Compl. ¶ 33.

17 But the overtime requirements in Section 510 do not apply
18 to an employee working “[a]n alternative workweek schedule
19 adopted pursuant a [CBA].” Cal. Lab. Code § 510(a)(2). To be
20 exempted from Section 510, the CBA must expressly provide for
21 “the wages, hours of work, and working conditions of the
22 employees,” and must provide “premium wage rates for all
23 overtime hours worked and a regular hourly rate of pay for those
24 employees of not less than 30 percent more than the state
25 minimum wage.” Id. at § 514. Thus, if the CBA at issue meets
26 the requirements of Section 514, Plaintiff’s claim will be
27 preempted. Curtis, 913 F.3d at 1154.

28 Plaintiff argues the CBA does not meet the requirements of

1 Section 514 because it fails to "provide a rate of pay of not
2 less than 30 percent more than the state minimum wage for all
3 employees covered under the CBA." Mot. at 10 (emphasis added).
4 Defendant does not dispute this but argues instead that Section
5 514 "does not require [that] all putative class members" earn
6 more than 30% of the state minimum wage. Opp'n at 7. In other
7 words, Defendant maintains it is enough that Plaintiff's rate of
8 pay complies with this requirement. Id. at 8.

9 To resolve this dispute, the Court must interpret Section
10 514. Plaintiff cites two cases that have analyzed this same
11 question. See Mot. at 12-13. The Court finds both to be
12 persuasive.

13 In Huffman v. Pac. Gateway Concessions LLC, the CBA in
14 question also did not meet the rate of pay requirement with
15 respect to all employees but did meet the requirement with
16 respect to the plaintiff. No.19-cv-01791-PJH, 2019 WL 2563133,
17 at *5 (N.D. Cal. June 21, 2019). In interpreting the statute,
18 the court first noted the use of the singular term "an
19 employee," when Section 514 states a covered employee is exempt
20 from Section 510. Id. Next, the statute states the CBA must
21 "expressly provide[] for the wages, hours of work, and working
22 conditions of the employees[]" Id. Contrasting "an employee"
23 with "the employees," the court found this part of the statute
24 requires the CBA to provide the expressed requirements as to
25 "all employees covered by the CBA." Id. Third, the court noted
26 the statute's requirement that the CBA provide premium overtime
27 rates and minimum wages exceeding no less than 30% of the state
28 minimum wage "for those employees." Id. The court found the

1 "plural term 'those employees' refers back to the statute's
2 earlier use of 'the employees' which, as discussed above, means
3 all employees covered by the CBA." Id. Accordingly, the court
4 held "it was apparent from the statute's plain language that the
5 CBA must satisfy Section 514's requirements with respect to all
6 covered employees in order to render Section 510 inapplicable to
7 any particular employee." Id. at 6. Because the CBA at issue
8 failed to provide an hourly rate of 130% the state minimum wage
9 for at least some employees, "plaintiff's asserted cause of
10 action involved a right conferred upon an employee by virtue of
11 state law." Id.

12 In Sarmiento, the court grappled with the same issue. 2019
13 WL 3059932, at *7. Relying on the reading of the statute's
14 plain language in Huffman, the Court also found Section 514 must
15 apply to all employees covered under the CBA for the claim to be
16 preempted. Id. at *9. Here too, the Court adopts the reading
17 of the statute's plain language in Huffman, to find that the CBA
18 does not meet Section 514's requirements because it does not
19 meet the requirements with respect to all employees.

20 The Court does not find the authority Defendant relies on
21 to be persuasive, because those cases did not involve the same
22 issue and did not interpret the statute as to this specific
23 inquiry. Reply at 6; see e.g., Curtis, 913 F.3d at 1153-54
24 ("[Plaintiff] does not dispute that both CBA's expressly provide
25 [] the [expressed requirements] of Section 514."). Accordingly,
26 the Court finds "[P]laintiff's asserted cause of action involves
27 a right conferred upon an employee by virtue of state law, not
28 by a CBA." Huffman, 2019 WL 2563133, at *6.

1 2. Step 2: Whether The State Law Right is Substantially
2 Dependent on the CBA

3 The Court must next consider whether Plaintiff's cause of
4 action is nevertheless "substantially dependent on analysis of
5 [the CBA]." Burnside, 491 F.3d at 1059-60. If the claim can be
6 resolved by only "looking to" the CBA, then the claim is not
7 preempted. Id.

8 Defendant argues Plaintiff's overtime claim is preempted
9 because it is "substantially dependent" on the CBA. Opp'n at
10 10. Yet Defendant only argues that the claim requires the Court
11 to look to the CBA to determine if it meets Section 514
12 requirements and to determine "what is the proper rate of pay
13 for [] hours worked." Opp'n at 13. But the Ninth Circuit made
14 clear in Burnside that looking to the CBA "merely to discern
15 that none of its terms is reasonably in dispute," or to
16 "comput[e] [a] penalty," "is [not] enough to warrant
17 preemption." 491 F.3d at 1060. Moreover, Defendant already
18 admitted that the wage structure in this CBA does not meet the
19 state minimum wage pay rate requirement. Opp'n at 7-10. Thus,
20 the resolution of Plaintiff's claim does not require more than
21 just a mere reference to the CBA. Plaintiffs claims are
22 therefore not preempted, because the overtime claim is not
23 substantially dependent on analysis of the CBA.

24 3. Supplemental Jurisdiction

25 Because Plaintiff's second cause of action is not preempted
26 by Section 301, the court lacks subject matter jurisdiction over
27 this claim. See Burnside, 491 F.3d at 1060. The Court
28 therefore does not have supplemental jurisdiction over

Plaintiff's other causes of action.

III. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's Motion to Remand this case to the Sacramento County Superior Court.

IT IS SO ORDERED.

Dated: July 7, 2020


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE